

THE HONORABLE MARY JO HESTON
CHAPTER 13
HEARING DATE: October 25, 2018
HEARING TIME: 1:00 P.M.
LOCATION: Tacoma, Washington

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In re: BRIAN DOUGLAS DESKINS and CHERYL ANN DESKINS, Debtors.	Case No.: 18-42845-MJH TRUSTEE'S OBJECTION TO CONFIRMATION WITH STRICT COMPLIANCE
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COMES NOW, Michael G. Malaier, Chapter 13 Standing Trustee, and objects to confirmation as follows:

BACKGROUND

Debtors filed this Chapter 13 case on August 21, 2018. The applicable commitment period is sixty months. The case is currently in the second month and the Meeting of Creditors has not yet been completed. The bar date for filing non-governmental claims is October 30, 2018. Scheduled unsecured claims total \$157,909.93, and scheduled priority claims total \$48,364.41. Debtors propose to pay at least \$47,513.52 to allowed nonpriority unsecured claims.

OBJECTION

- Plan is not feasible:
 - Plan is not proposed in good faith or is forbidden by law:
 - Plan fails to commit all excess disposable income for the applicable commitment period as required by 11 U.S.C. § 1325(b)(1)(B): The debtors must provided a evidence to support a deviation from the means test result. While a court may account for “changes in the debtor’s income or expenses that are known or virtually certain at the time of confirmation,” the debtors have not provided any evidence of such changes. *Hamilton v. Lanning*, 130 S.Ct. 2464 (2010). The debtors are seeking to reduce the amount paid to unsecured creditors from \$175,920.00 to \$47,513.52. See ECF # 2, pg. 3. Debtors must provide evidence of a change in the debtors’ income or expenses.

Trustee also requires that the debtors provide twelve months of bank statements for the debtor's business, twelve months or profit and loss statements, the debtors' business address, and the trustee's business information sheet.

- Plan does not meet the best interests of creditors test as required by 11 U.S.C. § 1325(a)(4): Trustee requires the following documents in order to complete his review:
 - (1) A stock statement for debtors' UPS stock.
 - (2) All bank accounts associated with debtors' business. It should also be noted that debtors inappropriately set the value of the business bank accounts with business debt, as debtor is a sole proprietor. See ECF # 1, pg. 14.
 - Schedules or other documentation insufficient:
 - Other: Debtors' should be required to amend their plan to provide for the secured claim of the IRS. *See Claim # 2*

WHEREFORE, Trustee requests that the objection to confirmation be sustained and debtors be ordered to file a motion to confirm a plan resolving the issues raised herein within 14 days of entry of the Order Sustaining Trustee's Objection to Confirmation; and to set the hearing on the next available motion calendar after the 14 days expires. If the Motion to

1 Confirm resolving the Trustee's issues is not filed and set for hearing as outlined above, the
2 Trustee requests he be allowed to enter an order dismissing the case, *ex parte*, without notice.

3 **DATED** this 15th day of October, 2018.
4

5 /s/ Matthew J.P. Johnson
6 Matthew J.P. Johnson, WSBA# 40476 for
7 Michael G. Malaier, Chapter 13 Trustee

CERTIFICATE OF MAILING

8 I declare under penalty of perjury under the laws of the United States as follows: I
9 mailed via regular mail a true and correct copy of the Trustee's Objection to Confirmation with
10 Strict Compliance to the following:

11 Brian Douglas Deskins
12 Cheryl Ann Deskins
13 5016 – 64th Ave. W.
14 University Place, WA 98467

15 The following parties received notice via ECF:
16

17 Lance E. Olsen
18 Noel P. Shillito
19 US Trustee
20

21 Executed at Tacoma, Washington on the 15th day of October, 2018.
22

23 /s/Tracy Maher
24 Tracy Maher
25 Office Manager
Michael G. Malaier
Chapter 13 Trustee